S T A T E O F N E W Y O R K

4980

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to appointment of superintendents

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1711 of the education law is amended by adding three new subdivisions 3-a, 5 and 6 to read as follows:

3-A. (A) A BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT, A COMMON SCHOOL DISTRICT, A CENTRAL SCHOOL DISTRICT AND A CENTRAL HIGH SCHOOL DISTRICT SHALL NOT MAKE ANY PAYMENT AS COMPENSATION FOR THE REMAINDER OF THE SUPERINTENDENT'S UNSERVED CONTRACT SHOULD EMPLOYMENT BE TERMINATED FOR JUST CAUSE.

(B) IN ALL OTHER INSTANCES, A BOARD OF EDUCATION SHALL HAVE THE AUTHORITY TO NEGOTIATE WITH THE SUPERINTENDENT A COMPENSATION AGREEMENT AS PAYMENT FOR THE REMAINDER OF THE SUPERINTENDENT'S UNSERVED CONTRACT, PROVIDED HOWEVER, NO BOARD OF EDUCATION SHALL MAKE ANY PAYMENT IN EXCESS OF TWENTY-FIVE PERCENT OF AVERAGE ANNUAL COMPENSATION PROVIDED FOR IN THE CURRENT CONTRACT. IN THE EVENT THERE IS LESS THAN ONE FULL YEAR REMAINING ON THE CONTRACT, THE COMPENSATION AGREEMENT SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE AVERAGE ANNUAL COMPENSATION PROVIDED FOR IN THE CONTRACT PROPORTIONALLY REDUCED TO REFLECT THE NUMBER OF MONTHS REMAINING IN THE CONTRACT.

(C) FOR THE PURPOSE OF THIS SUBDIVISION, COMPENSATION SHALL MEAN SALARY AND BENEFITS INCLUDING, BUT NOT LIMITED TO: ACCRUED AND UNUSED VACATION OR SICK LEAVE CREDITS, HEALTH INSURANCE, DISABILITY INSURANCE, LIFE INSURANCE, AND TRAVEL EXPENSES.

(D) AT THE NEXT REGULARLY SCHEDULED MEETING OF THE BOARD OF EDUCATION, THE PUBLIC SHALL BE NOTIFIED OF THE INITIATION OF NEGOTIATIONS PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. NO NEGOTIATIONS SHALL BE FINALIZED PRIOR TO SUCH PUBLIC NOTICE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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5. (A) CHARGES AGAINST A SUPERINTENDENT MAY ONLY BE BROUGHT BY THE BOARD OF EDUCATION AND ALL SUCH CHARGES SHALL BE IN WRITING. THE SUPERINTENDENT SHALL BE ENTITLED TO A FAIR HEARING ON SAID CHARGES, UPON AT LEAST THIRTY DAYS NOTICE, BEFORE AN INDEPENDENT HEARING OFFICER WHO SHALL BE AN ATTORNEY AT LAW IN GOOD STANDING IN THIS STATE. THE HEARING SHALL BE IN EXECUTIVE OR PUBLIC SESSION, AT THE OPTION OF THE SUPERINTENDENT. THE HEARING OFFICER MAY BE SELECTED BY MUTUAL AGREEMENT BETWEEN THE SUPERINTENDENT AND THE BOARD OF EDUCATION OR, IN THE EVENT NO SUCH AGREEMENT IS REACHED WITHIN FIFTEEN DAYS AFTER THE SUPERINTENDENT'S RECEIPT OF THE WRITTEN CHARGES, A REQUEST SHALL BE MADE TO THE AMERICAN ARBITRATION ASSOCIATION, BY THE SUPERINTENDENT FOR A LIST OF THREE QUALIFIED HEARING OFFICERS. THEREAFTER, THE BOARD OF EDUCATION SHALL HAVE THREE BUSINESS DAYS FROM THE RECEIPT OF THE LIST OF QUALIFIED HEARING OFFICERS TO SELECT THE HEARING OFFICER.

(B) A SUPERINTENDENT SHALL BE ENTITLED TO DUE PROCESS PROTECTION AT SUCH HEARING, INCLUDING BUT NOT LIMITED TO THE RIGHT TO ELECT A PUBLIC OR PRIVATE HEARING; TO BE REPRESENTED BY COUNSEL, TO PRESENT, CROSS-EXAMINE AND SUBPOENA WITNESSES, TO SUBPOENA DOCUMENTS, PAPERS, LETTERS, OR OTHER TANGIBLE EVIDENCE, TO HAVE ALL TESTIMONY GIVEN UNDER OATH, TO RECEIVE WITHOUT COST AN ACCURATE WRITTEN TRANSCRIPT OF THE PROCEEDINGS; AND TO RECEIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE HEARING OFFICER'S DECISION SHALL BE FINAL UPON THE PARTIES, SUBJECT TO THEIR RESPECTIVE RIGHTS TO APPEAL IN ACCORDANCE WITH LAW. THE DISTRICT, AT ITS EXPENSE, SHALL PROVIDE A CERTIFIED SHORTHAND OR COURT REPORTER WHO SHALL TRANSCRIBE ALL PROCEEDINGS.

(C) ANY CRITICISMS OR COMPLAINTS WHICH HAVE NOT BEEN PREVIOUSLY FORWARDED TO THE SUPERINTENDENT IN ACCORDANCE WITH THIS SUBDIVISION OR CHARGES BASED UPON AN ALLEGATION WHICH WAS MADE KNOWN IN WRITING TO THE SUPERINTENDENT BY THE BOARD OF EDUCATION MORE THAN EIGHTEEN MONTHS BEFORE THE CHARGE IS FILED, SHALL NOT BE ADMISSIBLE AT SUCH A HEARING AGAINST THE SUPERINTENDENT. THE HEARING OFFICER SHALL STRIKE FROM THE WRITTEN CHARGE OR CHARGES ANY SUCH CHARGE MADE AGAINST THE SUPERINTENDENT. SUCH LIMITATION SHALL NOT APPLY WHERE SUCH COMPLAINTS OR CHARGES WOULD, IF PROVED IN A COURT OF COMPETENT JURISDICTION, CONSTITUTE A CRIME.

(D) THE HEARING OFFICER SHALL, UPON THE CONCLUSION OF THE HEARING, PREPARE AND SUBMIT A WRITTEN DECISION, WHICH DECISION SHALL INCLUDE FINDINGS OF FACT AND A DISPOSITION OF EACH CHARGE. BOTH THE BOARD OF EDUCATION AND SUPERINTENDENT SHALL BE BOUND BY THE DECISION OF THE HEARING OFFICER. BOTH PARTIES SHALL, HOWEVER, RETAIN THEIR RIGHT TO APPEAL THE DECISION OF THE HEARING OFFICER TO A COURT OF COMPETENT JURISDICTION.

(E) IF THE CHARGES AGAINST THE SUPERINTENDENT ARE DEEMED ARBITRARY AND CAPRICIOUS AT SUCH HEARING OR AFTER ANY APPEAL THEREFROM, THE BOARD OF EDUCATION SHALL REIMBURSE THE SUPERINTENDENT FOR HIS OR HER COSTS AND ATTORNEYS FEES INCURRED IN DEFENSE OF THE CHARGES OR APPEAL.

6. ALL CONTRACTS ENTERED INTO AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION. ANY CONTRACTS INCONSISTENT WITH PROVISIONS OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT, PROVIDED THAT ANY RENEWAL BY THE BOARD OF EDUCATION OF SUCH CONTRACT SHALL CONTAIN THE PROVISIONS SET FORTH IN THIS SECTION.

S 2. Section 2507 of the education law is amended by adding three new subdivisions 3, 4 and 5 to read as follows:

3. (A) A BOARD OF EDUCATION SHALL NOT MAKE ANY PAYMENT AS COMPENSATION FOR THE REMAINDER OF THE SUPERINTENDENT'S UNSERVED CONTRACT SHOULD EMPLOYMENT BE TERMINATED FOR JUST CAUSE.

(B) IN ALL OTHER INSTANCES, A BOARD OF EDUCATION SHALL HAVE THE AUTHORITY TO NEGOTIATE WITH THE SUPERINTENDENT A COMPENSATION AGREEMENT AS PAYMENT FOR THE REMAINDER OF THE SUPERINTENDENT'S UNSERVED CONTRACT, PROVIDED HOWEVER, NO BOARD OF EDUCATION SHALL MAKE ANY PAYMENT IN EXCESS OF TWENTY-FIVE PERCENT OF AVERAGE ANNUAL COMPENSATION PROVIDED FOR IN THE CURRENT CONTRACT. IN THE EVENT THERE IS LESS THAN ONE FULL YEAR REMAINING ON THE CONTRACT, THE COMPENSATION AGREEMENT SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE AVERAGE ANNUAL COMPENSATION PROVIDED FOR IN THE CONTRACT PROPORTIONALLY REDUCED TO REFLECT THE NUMBER OF MONTHS REMAINING IN THE CONTRACT.

(C) FOR THE PURPOSE OF THIS SUBDIVISION, COMPENSATION SHALL MEAN SALARY AND BENEFITS INCLUDING, BUT NOT LIMITED TO: ACCRUED AND UNUSED VACATION OR SICK LEAVE CREDITS, HEALTH INSURANCE, DISABILITY INSURANCE, LIFE INSURANCE, AND TRAVEL EXPENSES.

(D) AT THE NEXT REGULARLY SCHEDULED MEETING OF THE BOARD OF EDUCATION, THE PUBLIC SHALL BE NOTIFIED OF THE INITIATION OF NEGOTIATIONS PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. NO NEGOTIATIONS SHALL BE FINALIZED PRIOR TO SUCH PUBLIC NOTICE.

4. (A) CHARGES AGAINST A SUPERINTENDENT MAY ONLY BE BROUGHT BY THE BOARD OF EDUCATION AND ALL SUCH CHARGES SHALL BE IN WRITING. THE SUPERINTENDENT SHALL BE ENTITLED TO A FAIR HEARING ON SAID CHARGES, UPON AT LEAST THIRTY DAYS NOTICE, BEFORE AN INDEPENDENT HEARING OFFICER WHO SHALL BE AN ATTORNEY AT LAW IN GOOD STANDING IN THIS STATE. THE HEARING SHALL BE IN EXECUTIVE OR PUBLIC SESSION, AT THE OPTION OF THE SUPERINTENDENT. THE HEARING OFFICER MAY BE SELECTED BY MUTUAL AGREEMENT BETWEEN THE SUPERINTENDENT AND THE BOARD OF EDUCATION OR, IN THE EVENT NO SUCH AGREEMENT IS REACHED WITHIN FIFTEEN DAYS AFTER THE SUPERINTENDENT'S RECEIPT OF THE WRITTEN CHARGES, A REQUEST SHALL BE MADE TO THE AMERICAN ARBITRATION ASSOCIATION, BY THE SUPERINTENDENT FOR A LIST OF THREE QUALIFIED HEARING OFFICERS. THEREAFTER, THE BOARD OF EDUCATION SHALL HAVE THREE BUSINESS DAYS FROM THE RECEIPT OF THE LIST OF QUALIFIED HEARING OFFICERS TO SELECT THE HEARING OFFICER.

(B) A SUPERINTENDENT SHALL BE ENTITLED TO DUE PROCESS PROTECTION AT SUCH HEARING, INCLUDING BUT NOT LIMITED TO THE RIGHT TO ELECT A PUBLIC OR PRIVATE HEARING; TO BE REPRESENTED BY COUNSEL, TO PRESENT, CROSS-EXAMINE AND SUBPOENA WITNESSES, TO SUBPOENA DOCUMENTS, PAPERS, LETTERS, OR OTHER TANGIBLE EVIDENCE, TO HAVE ALL TESTIMONY GIVEN UNDER OATH, TO RECEIVE WITHOUT COST AN ACCURATE WRITTEN TRANSCRIPT OF THE PROCEEDINGS; AND TO RECEIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE HEARING OFFICER'S DECISION SHALL BE FINAL UPON THE PARTIES, SUBJECT TO THEIR RESPECTIVE RIGHTS TO APPEAL IN ACCORDANCE WITH LAW. THE DISTRICT, AT ITS EXPENSE, SHALL PROVIDE A CERTIFIED SHORTHAND OR COURT REPORTER WHO SHALL TRANSCRIBE ALL PROCEEDINGS.

(C) ANY CRITICISMS OR COMPLAINTS WHICH HAVE NOT BEEN PREVIOUSLY FORWARDED TO THE SUPERINTENDENT IN ACCORDANCE WITH THIS SUBDIVISION OR CHARGES BASED UPON AN ALLEGATION WHICH WAS MADE KNOWN IN WRITING TO THE SUPERINTENDENT BY THE BOARD OF EDUCATION MORE THAN EIGHTEEN MONTHS BEFORE THE CHARGE IS FILED, SHALL NOT BE ADMISSIBLE AT SUCH A HEARING AGAINST THE SUPERINTENDENT. THE HEARING OFFICER SHALL STRIKE FROM THE WRITTEN CHARGE OR CHARGES ANY SUCH CHARGE MADE AGAINST THE SUPERINTENDENT. SUCH LIMITATION SHALL NOT APPLY WHERE SUCH COMPLAINTS OR CHARGES WOULD, IF PROVED IN A COURT OF COMPETENT JURISDICTION, CONSTITUTE A CRIME.

(D) THE HEARING OFFICER SHALL, UPON THE CONCLUSION OF THE HEARING, PREPARE AND SUBMIT A WRITTEN DECISION, WHICH DECISION SHALL INCLUDE FINDINGS OF FACT AND A DISPOSITION OF EACH CHARGE. BOTH THE BOARD OF

EDUCATION AND SUPERINTENDENT SHALL BE BOUND BY THE DECISION OF THE HEARING OFFICER. BOTH PARTIES SHALL, HOWEVER, RETAIN THEIR RIGHT TO APPEAL THE DECISION OF THE HEARING OFFICER TO A COURT OF COMPETENT JURISDICTION.

(E) IF THE CHARGES AGAINST THE SUPERINTENDENT ARE DEEMED ARBITRARY AND CAPRICIOUS AT SUCH HEARING OR AFTER ANY APPEAL THEREFROM, THE BOARD OF EDUCATION SHALL REIMBURSE THE SUPERINTENDENT FOR HIS OR HER COSTS AND ATTORNEYS FEES INCURRED IN DEFENSE OF THE CHARGES OR APPEAL.

5. ALL CONTRACTS ENTERED INTO AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION. ANY CONTRACTS INCONSISTENT WITH PROVISIONS OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT, PROVIDED THAT ANY RENEWAL BY THE BOARD OF EDUCATION OF SUCH CONTRACT SHALL CONTAIN THE PROVISIONS SET FORTH IN THIS SECTION.

S 3. Section 2565 of the education law is amended by adding three new subdivisions 4, 5 and 6 to read as follows:

4. (A) A BOARD OF EDUCATION SHALL NOT MAKE ANY PAYMENT AS COMPENSATION FOR THE REMAINDER OF THE SUPERINTENDENT'S UNSERVED CONTRACT SHOULD EMPLOYMENT BE TERMINATED FOR JUST CAUSE.

(B) IN ALL OTHER INSTANCES, A BOARD OF EDUCATION SHALL HAVE THE AUTHORITY TO NEGOTIATE WITH THE SUPERINTENDENT A COMPENSATION AGREEMENT AS PAYMENT FOR THE REMAINDER OF THE SUPERINTENDENT'S UNSERVED CONTRACT, PROVIDED HOWEVER, NO BOARD OF EDUCATION SHALL MAKE ANY PAYMENT IN EXCESS OF TWENTY-FIVE PERCENT OF AVERAGE ANNUAL COMPENSATION PROVIDED FOR IN THE CURRENT CONTRACT. IN THE EVENT THERE IS LESS THAN ONE FULL YEAR REMAINING ON THE CONTRACT, THE COMPENSATION AGREEMENT SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE AVERAGE ANNUAL COMPENSATION PROVIDED FOR IN THE CONTRACT PROPORTIONALLY REDUCED TO REFLECT THE NUMBER OF MONTHS REMAINING IN THE CONTRACT.

(C) FOR THE PURPOSE OF THIS SUBDIVISION, COMPENSATION SHALL MEAN SALARY AND BENEFITS INCLUDING, BUT NOT LIMITED TO: ACCRUED AND UNUSED VACATION OR SICK LEAVE CREDITS, HEALTH INSURANCE, DISABILITY INSURANCE, LIFE INSURANCE, AND TRAVEL EXPENSES.

(D) AT THE NEXT REGULARLY SCHEDULED MEETING OF THE BOARD OF EDUCATION, THE PUBLIC SHALL BE NOTIFIED OF THE INITIATION OF NEGOTIATIONS PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. NO NEGOTIATIONS SHALL BE FINALIZED PRIOR TO SUCH PUBLIC NOTICE.

(E) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO A CITY SCHOOL DISTRICT IN A CITY WITH A POPULATION OF ONE MILLION OR MORE.

5. (A) CHARGES AGAINST A SUPERINTENDENT MAY ONLY BE BROUGHT BY THE BOARD OF EDUCATION AND ALL SUCH CHARGES SHALL BE IN WRITING. THE SUPERINTENDENT SHALL BE ENTITLED TO A FAIR HEARING ON SAID CHARGES, UPON AT LEAST THIRTY DAYS NOTICE, BEFORE AN INDEPENDENT HEARING OFFICER WHO SHALL BE AN ATTORNEY AT LAW IN GOOD STANDING IN THIS STATE. THE HEARING SHALL BE IN EXECUTIVE OR PUBLIC SESSION, AT THE OPTION OF THE SUPERINTENDENT. THE HEARING OFFICER MAY BE SELECTED BY MUTUAL AGREEMENT BETWEEN THE SUPERINTENDENT AND THE BOARD OF EDUCATION OR, IN THE EVENT NO SUCH AGREEMENT IS REACHED WITHIN FIFTEEN DAYS AFTER THE SUPERINTENDENT'S RECEIPT OF THE WRITTEN CHARGES, A REQUEST SHALL BE MADE TO THE AMERICAN ARBITRATION ASSOCIATION, BY THE SUPERINTENDENT FOR A LIST OF THREE QUALIFIED HEARING OFFICERS. THEREAFTER, THE BOARD OF EDUCATION SHALL HAVE THREE BUSINESS DAYS FROM THE RECEIPT OF THE LIST OF QUALIFIED HEARING OFFICERS TO SELECT THE HEARING OFFICER.

(B) A SUPERINTENDENT SHALL BE ENTITLED TO DUE PROCESS PROTECTION AT SUCH HEARING, INCLUDING BUT NOT LIMITED TO THE RIGHT TO ELECT A PUBLIC OR PRIVATE HEARING; TO BE REPRESENTED BY COUNSEL, TO PRESENT, CROSS-EXAMINE AND SUBPOENA WITNESSES, TO SUBPOENA DOCUMENTS, PAPERS, LETTERS, OR

OTHER TANGIBLE EVIDENCE, TO HAVE ALL TESTIMONY GIVEN UNDER OATH, TO RECEIVE WITHOUT COST AN ACCURATE WRITTEN TRANSCRIPT OF THE PROCEEDINGS; AND TO RECEIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE HEARING OFFICER'S DECISION SHALL BE FINAL UPON THE PARTIES, SUBJECT TO THEIR RESPECTIVE RIGHTS TO APPEAL IN ACCORDANCE WITH LAW. THE DISTRICT, AT ITS EXPENSE, SHALL PROVIDE A CERTIFIED SHORTHAND OR COURT REPORTER WHO SHALL TRANSCRIBE ALL PROCEEDINGS.

(C) ANY CRITICISMS OR COMPLAINTS WHICH HAVE NOT BEEN PREVIOUSLY FORWARDED TO THE SUPERINTENDENT IN ACCORDANCE WITH THIS SUBDIVISION OR CHARGES BASED UPON AN ALLEGATION WHICH WAS MADE KNOWN IN WRITING TO THE SUPERINTENDENT BY THE BOARD OF EDUCATION MORE THAN EIGHTEEN MONTHS BEFORE THE CHARGE IS FILED, SHALL NOT BE ADMISSIBLE AT SUCH A HEARING AGAINST THE SUPERINTENDENT. THE HEARING OFFICER SHALL STRIKE FROM THE WRITTEN CHARGE OR CHARGES ANY SUCH CHARGE MADE AGAINST THE SUPERINTENDENT. SUCH LIMITATION SHALL NOT APPLY WHERE SUCH COMPLAINTS OR CHARGES WOULD, IF PROVED IN A COURT OF COMPETENT JURISDICTION, CONSTITUTE A CRIME.

(D) THE HEARING OFFICER SHALL, UPON THE CONCLUSION OF THE HEARING, PREPARE AND SUBMIT A WRITTEN DECISION, WHICH DECISION SHALL INCLUDE FINDINGS OF FACT AND A DISPOSITION OF EACH CHARGE. BOTH THE BOARD OF EDUCATION AND SUPERINTENDENT SHALL BE BOUND BY THE DECISION OF THE HEARING OFFICER. BOTH PARTIES SHALL, HOWEVER, RETAIN THEIR RIGHT TO APPEAL THE DECISION OF THE HEARING OFFICER TO A COURT OF COMPETENT JURISDICTION.

(E) IF THE CHARGES AGAINST THE SUPERINTENDENT ARE DEEMED ARBITRARY AND CAPRICIOUS AT SUCH HEARING OR AFTER ANY APPEAL THEREFROM, THE BOARD OF EDUCATION SHALL REIMBURSE THE SUPERINTENDENT FOR HIS OR HER COSTS AND ATTORNEYS FEES INCURRED IN DEFENSE OF THE CHARGES OR APPEAL.

(F) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO A CITY SCHOOL DISTRICT IN A CITY WITH A POPULATION OF ONE MILLION OR MORE.

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S 4. This act shall take effect July 1, 2009.